IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.552/2005

Decided on.27.8.2007

State of H.P. & another. **…Petitioners.**

Versus

Hussan Chand. **…Respondent**

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1]*.yes.*

For the petitioner : **Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakashi Sharma, Deputy Advocate Generals.**

For the respondents **Mr. K.D. Sood, Advocate with Mr. Rajnish K. Lal, Advocate.**

Rajiv Sharma, J.

A challenge has been laid by the State to the award passed by the H.P. Labour Court-cum-Industrial Tribunal, Dharamshala dated 2.3.2005 in reference No. 360/2002 (RBT No. 180/2004).

The brief facts necessary for the adjudication of this petition are that the State Government had made the following reference to the H.P. Labour Court-cum-Industrial Tribunal, Dharamshala:

> **"Whether the termination of services of Shri Hussan Chand S/o Sh. Amar Nath, Ex.-daily wages Beldar by the Executive Engineer, Irrigation and Public Health, Division No.1-, Una, Distt. Una, w.e.f. 31.1.99 without complying the provisions of the Industrial Disputes Act, 1947, is proper and justified? If not, what relief of service benefits and amount of compensation Shri Hussan Chand workman is entitled to?"**

The workman had issued demand notice under section 2-A of the Industrial Disputes Act, 1947 to the Executive Engineer, Irrigation and

---

[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? yes.

Public Health Division No.1, Una on 30.9.2000. It appears that after the failure of the conciliation proceedings the State Government had made the reference in the year 2002. In sequel to the reference made by the State Government, the respondent hereinafter referred to as the workman had filed his statement of claim on 7.1.2003. The workman had primarily contended that he was engaged in two spells by the petitioner-State i.e. 1st March, 1997 to 20th December, 1997 and 1st May, 1998 to 31st January, 1999 and was retrenched without following the provisions of section 25-F of the industrial Disputes Act, 1947 and the persons junior to him were retained at the time of his retrenchment i.e. 1st January, 2000. The employer had filed reply to the statement of claim. The principal stand of the employer before the Labour Court was that the workman himself has abandoned the job and has not joined his duties despite two letters dated 3.10.2001 and 8.11.2001 issued to him to join his duties. The Labour Court on the basis of the pleadings of the parties and evidence led by them answered the award in affirmative directing the reinstatement of the workman with all consequential benefits, including seniority and back wages to the extent of 60% on 2nd March, 2005.

The learned Advocate General had strenuously contended that the award dated 2.3.2005 is not sustainable in the eyes of law since the workman had not completed 240 days preceding his retrenchment on 1st January, 2000. He also contended that the reference was made by the State is inordinately delayed since the petitioner was retrenched on 1st January, 2000 and the reference was made in the year 2002. He also contended that the workman was not entitled to back wages.

Mr. K.D. Sood, Advocate had supported the award dated 2.3.2005 passed by the Labour Court.

I have heard the learned counsel for the parties and perused the record.

The workman had worked in two spells i.e. 1.3.1997 to 20.12.1997 and he had completed 256 days during this spell. He was re-engaged on 1st May, 1998 and was permitted to discharge his duties till 31st December, 1999 and he was retrenched with effect from 1st January, 2000. He raised demand vide notice dated 30th September, 2000. Thereafter the procedure as prescribed under the Industrial Disputes Act, 1947 had been gone into and it was only on the failure of the conciliation proceedings that the reference has been made by the State in the year 2002. Thus, there is no inordinate delay in raising the dispute by the workman and the plea raised by the learned Advocate General to this extent is untenable.

The workman had filed Ex.PA in support of his claim before the Labour Court. He had given the details of two workmen, namely, Sh. Sohan Lal and Sh. Surinder Kumar, who were engaged on 1st November, 1997 and 1st June, 1997 but retained at the time of effecting the retrenchment of the workman. He had categorically stated in his affidavit that he never abandoned his job and he never received the copy of the letter dated 8.11.2001. The employer had produced one Sh. Man Chand Sharma, Assistant Engineer, I.P.H. Sub Division, Mehatpur as RW-1. He had not brought anything on record to substantiate the plea that the workman was issued letters dated 3.10.2001 and 8.11.2001 to resume his duties. It is clear from Ex.RW-1/A that one workman was engaged on 1st May, 1998, the date on which the workman was retrenched in his earlier spell. Shri. Jaswant Singh was engaged on the same date i.e. 1st May, 1998. Thus, the employer had retained Shri Sohan Lal, Sh. Surinder Kumar and Sh. Jaswant Singh while effecting the retrenchment of the workman. It is settled law by now that workman need not complete 240

days in a calendar year preceding his retrenchment for the protection of section 25 (G) and (H) of the Industrial Disputes Act, 1947.

The Hon'ble Supreme Court in ***Central Bank of India Versus S.Satyam and others,*** (1996) 5 SCC 419 has held that it is not necessary for the workman to complete 240 days in one year to get benefit of section 25 (G) and (H) of the Industrial Disputes Act. Their Lordships have held as under:

> **"The plain language of Section 25-H speaks only of re-employment of "retrenched workmen". The ordinary meaning of the expression "retrenched workmen" must relate to the wide meaning of 'retrenchment' given in section 2 (oo). Section 25-F also uses the word 'retrenchment' but qualifies it by use of the further words "workman…who has been in continuous service for not less than one year". Thus, section 25-F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words "workman…who has been in continuous service for not less than one year:. It is clear that Section 25-F applies to the retrenchment of a workman who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year; and it does not restrict or curtail the meaning of retrenchment merely because the provision therein is made only for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all retrenchments while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25-G prescribes the principle for retrenchment and applies ordinarily the principle of "last come first go" which is not confined only to workmen who have been in continuous service for not less than one year, covered by Section 25-F."**

The Apex Court has held in ***Samishta Dube Versus City Board, Etawah and another***, 1999 (2) SLR 51 that the principle of last come first

go should ordinarily be followed even in the case of daily wagers unless for reasons to be recorded the employer retrenches any other person. Their Lordships of the Supreme Court have held as under:

> **"We shall next deal with the point whether, in case employees junior to the appellant were retained, the directions issued by the Labour Court be treated as valid. Section 6-P of the U.P. Act (which corresponds to Section 25 G of the Central Act of 1947) states that where any workman in an industrial establishment is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf – the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded, the employer retrenches any other person. Now this provision is not controlled by conditions as to length of service contained in Section 6 (N) (which corresponds to Section 25F of the Industrial Disputes Act, 1947). Section 6-P does not require any particular period of continuous service as required by Section 6-N. In Kamlesh Singh vs. Presiding Officer (1996 Suppl. SCC 679) in a matter which arise under this very Section 6-P of the U.P. Act, it was so held. Hence the High Court was wrong in relying on the fact that the appellant had put in only three and a half months of service and in denying relief. (See also in this connection Central Bank of India vs. S. Satyam and others 1996 (5) SCC 419): [1996(4) SLR (SC)].**
>
> **Nor was the High Court correct in stating that no rule of seniority was applicable to daily wagers. There is no such restriction in Section 6P of the U.P. Act read with Section 2(z) of the U.P. Act which defines 'workman'.**
>
> **It is true that the rule of 'first come, last go' in Section 6-P could be deviated from by an employer because the section uses the word 'ordinarily'. It is, therefore, permissible for the employer to deviate from the rule in cases of lack of efficiency or less of confidence etc. as held in M/s Swadesmitran**

Limited, Madras vs. Their Workmen (1960 (3) SCR 144). But the burden will then on the employer to justify the deviation. No such attempt has been made in the present case. Hence, it is clear that there is clear violation of Section 6-P of the U.P. Act."

Accordingly it is held that the employer had violated the provisions of section 25 (G) of the Industrial Disputes Act and the workman is entitled to reinstatement in view of the law laid down by the Hon'ble Supreme Court as noted hereinabove.

The other contention of the learned Advocate General that the workman is not entitled to any back wages as directed by the Labour Court is also untenable. The workman had categorically stated in para 10-A of the demand notice that he tried for employment but in vain after his retrenchment. The same has been elaborated by him in para 9 of the statement of claim filed before the Labour Court. The finding recorded by the Labour Court that the workman was not gainfully employed with effect from 22.12.1997 and thereafter 31.1.1999 onwards is upheld. There is neither any jurisdictional error nor any procedural irregularity in the award dated 2.3.2005

The upshot of the above discussion is that:

(i) There was no inordinate delay in raising the industrial dispute by the workman.

(ii) The workman was entitled to the protection of section 25 (G) of the Industrial Disputes Act since persons junior to him were retained at the time of his retrenchment.

(iii) The workman is entitled to back wages as awarded by the Labour Court with continuity.

Accordingly there is no merit in the writ petition and the same is dismissed with no order as to costs.

(Rajiv Sharma), Judge

August 27, 2007
Awasthi